

9 FAM 41.86 Notes

(TL:VISA-465; 09-25-2002)

9 FAM 41.86 N1 Background

(TL:VISA-377; 03-29-2002)

The Legal Immigration Family Equity Act (LIFE Act), Public Law 106-553 added a new nonimmigrant category (V) to provide nonimmigrant status for second preference spouses and children of permanent residents for whom petitions were filed on or before the date of enactment (December 21, 2000) and who have been waiting for three or more years for petition approval, adjustment of status or an immigrant visa. This new category is intended to permit long-separated families to reunite in the United States and await second preference adjustment of status. Because V status is available to those whose petitions were filed on or before December 21, 2000, this category effectively sunsets in three years or when the pool of eligible applicants is eventually exhausted over time, whichever comes first.

9 FAM 41.86 N2 Grounds of Inadmissibility

(TL:VISA-377; 03-29-2002)

a. An alien seeking admission under INA 101(a)(15)(V) is subject to all grounds of inadmissibility under INA 212(a), except 212(a)(9)(B).

b. Such alien is also not subject to the residence abroad requirement of INA 214(b). However, INA 214(b) would be an appropriate ground of refusal if and/or when an applicant does not meet all of the specific requirements relating to V classification, i.e., the petition is not yet 3 years old, the applicant is not entitled to derivative status (e.g., the child of a V-3), or the V-2 or V-3 applicant has aged-out.

c. Posts should use the blue refusal sheets usually used with IV cases, even though Vs are NIVs. If the refusal is based on INA 214(b), the reason for that refusal should be clearly noted, not only on the refusal letter given to the applicant but also in the NIV system, e.g., "insufficient waiting period."

9 FAM 41.86 N3 No V Visa if Priority Date is Current

(TL:VISA-377; 03-29-2002)

If the applicant's priority date is current, consular officers must process the applicant as an immigrant, as the provision, for visa purposes, is only for those who are unable to obtain an immigrant visa because the petition has not yet been approved or a visa number is not yet available. The statute does also confer eligibility for V status if "the application for a visa [among other things] remains pending", but, practically speaking, it is not possible under current regulations for an immigrant visa application to be "pending." 22 CFR 42.81 requires that an application for an immigrant visa be either approved or denied on completion of a formal application.

9 FAM 41.86 N4 Derivative Visas

(TL:VISA-377; 03-29-2002)

The unmarried child of an LPR who is the beneficiary of an F2A petition in his or her own name is classifiable as a V-2 in his or her own right, not as a derivative. The V-2 status child need not accompany or follow to join a V-1 parent. Thus V-2s can precede the V-1 principal applicant to the United States. On the other hand, the unmarried child of an LPR who is included on his or her beneficiary parent's petition is deemed to have acquired status under INA 203(d) and is thus classified as a V-3. The unmarried child of either a V-1 or a V-2 also gains derivative V status as a V-3 under the provision in INA 203(d). A V-3 alien may not be issued a visa, or travel, before the issuance of a visa to the V-1 or V-2 from whom he or she is acquiring V classification.

9 FAM 41.86 N5 Documentary Requirements

(TL:VISA-377; 03-29-2002)

a. Applicants for V visas will be processed with documentary requirements similar as those for the K-1 fiancé visa, i.e., the Form DS-156, *Nonimmigrant Visa Application*, the Form DS-3052, *Nonimmigrant V Visa Application* and the medical forms, Form DS-2053, *Medical Examination for Immigrant or Refugee*, Form DS-3024, *Chest X-ray and Classification Worksheet*, Form DS-3025, *Vaccination Documentation Worksheet*, and Form DS-3026, *Medical History and Physical Examination Worksheet*. Other requirements are:

- (1) The applicant must undergo the standard IV medical examination by a panel physician;
- (2) An NCIC name check must be done by NVC for each applicant;

(3) The applicant must present local police certificates, if required; and

(4) The applicant must present evidence of family relationship to the petitioner at the time of the visa interview.

b. The only INA 212(a) ineligibility ground specifically made inapplicable by the LIFE Act is paragraph (9)(B). Thus, an applicant for a V visa is subject to INA 212(a)(4) as are all other applicants. The applicant must demonstrate to the consular officer's satisfaction that he or she will not become a public charge. An applicant may present a letter from the petitioner's employer or evidence that he or she will be self-supporting. Consular officers may require the Form I-134, *Affidavit of Support*, when it is deemed useful. The consular officer may not require a Form I-864, *Affidavit of Support Under Section 213A of the Act*.

9 FAM 41.86 N6 Confirming Eligibility for V Status

(TL:VISA-377; 03-29-2002)

a. NVC stores files for F2A cases that are not yet current. Therefore, NVC has entered in CLASS all applicants whose files are at NVC, are three or more years old, and are not yet current, which confirms eligibility for V processing for those applicants. It will continue to do so for all F2A aliens whose petitions were filed prior to December 20, 2000, as these petitions hit the three-year mark. NVC has sent, and will continue to send, an information or instruction sheet to those applicants with INS-approved petitions in storage at NVC. The letter briefly outlines the documentary requirements for the V visa and instructs the applicant to contact the post. This will be the only mailing from NVC to V applicants; other instructional or appointment packets will be sent. NVC will not send an electronic file or a paper file to posts. Successful V applicants will enter the United States and remain in V status until an immigrant number is available. They will then be eligible to adjust status and INS may need to retrieve the file from NVC.

b. Arrangements have not yet been completed with INS for a mechanism by which to identify aliens eligible for V status on the basis of a petition filed three or more years earlier but not yet adjudicated.

9 FAM 41.86 N7 Validity and Fees for V Visas

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a. There is no fee for a V application or issuance, other than the standard MRV fee. There are no separate reciprocity fees. Applicants must pay the panel physician for the physical examination.

b. Unless constrained by security clearance requirements or other waivers, which are valid for a year or less, the validity of a V1 visa should be 10 years for multiple entries. V-2 and V-3 applicants, however, can receive visas only valid until they reach the age of 21 years. Applicants for V-2 and V-3 visas will be required to sign a form apprising them that entering into a marriage prior to obtaining adjustment of status will render them ineligible for adjust as an F2A immigrant.

c. *INS will initially admit persons with V visas for a two-year period. If no other action has taken place within that period, such an alien will need to apply for an extension of stay if his or her priority date is still not current.*

9 FAM 41.86 N8 INA 212(a) Refusals

(TL:VISA-465; 09-25-2002)

a. As the V visa is an NIV, an applicant ineligible under INA 212(a) (other than (9)(B) which is inapplicable) will need an INA 212(d)(3)(A) waiver. Such waiver recommendations should be handled in the same fashion as for those of fiance(e)s. See 9 FAM 41.81 N9.

b. As a V applicant is also, however, a de facto IV applicant, consular officers must consider whether a waiver opportunity in connection with an IV is available. If not, the consular officer may prefer not to recommend a (d)(3)(A) waiver.

c. If there is also the possibility of an IV waiver, the consular officer should both recommend the (d)(3)(A) waiver and require the applicant to file simultaneously the Form I-601, *Application for Waiver of Grounds of Excludability*. (The latter involves collecting a \$95.00 fee for INS.) If the IV waiver application is approved, it will be in place when the application for adjustment is filed later.

9 FAM 41.86 N9 Applicant With CLASS A or CLASS B (TB) Medical Condition

(TL:VISA-465; 09-25-2002)

See 9 FAM 41.108 N6.2, 9 FAM 41.108 N7 and 9 FAM 41.108 N8.

9 FAM 41.86 N10 Processing Priorities

(TL:VISA-324; 10-10-2001)

The purpose of the LIFE Act is to reunite families. It is important that posts process these cases as quickly as possible. Posts should first handle IV cases that are current for processing and for which visa numbers are available. The second priority should be V-1 and K-3 applicants and their children.